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est, uninclosed, and uncultivated, there is not such evidence of title and possession as to sustain the caveat.

[Ed. Note.—For other cases, see Public Lands, Dec. Dig. § 183.\* For other cases, see 11 Va.-W. Va. Enc. Dig. 445, 451.]

**5. Public Lands (§ 183\*)—Disposal of Lands of State—Caveat—Court Right Proceedings.**—Code 1904, § 2339, providing that no location of any land office warrant on land which shall have been settled five years previously, on which taxes have been paid at any time within five years by the settler or any person claiming under him, shall be valid, and any title of the commonwealth is relinquished to the person in possession under such settlement or payment, and authorizing any person making such settlement and payment to have the land surveyed and prove the settlement and payment before the court of the county where the land lies, cannot be relied on to sustain a caveat by one who was not in possession of the land at the date of the caveatee's location, and who has never obtained a court right thereto, nor taken any steps to acquire it.

[Ed. Note.—For other cases, see Public Lands, Dec. Dig. § 183\* For other cases, see 11 Va.-W. Va. Enc. Dig. 445.]

Error to Circuit Court, Patrick County.

Caveat by one Minick to an application by one Woods for a grant of land entered as waste and unappropriated land. From a judgment in favor of the caveatee, the caveator brings error. Affirmed.

*S. A. Thompson* and *R. E. Woolwine*, for plaintiff in error.

*J. M. Hooker*, for defendant in error.

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#### CITY OF RICHMOND et al. v. SCHONBERGER.

June 9, 1910.

[68 S. E. 284.]

**1. Municipal Corporations (§ 757\*)—Streets—Duty to Keep in Safe Condition.**—It is the duty of a city to keep its streets in a reasonably safe condition.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 1591-1597; Dec. Dig. § 757.\* For other cases, see 12 Va.-W. Va. Enc. Dig. 898, et seq.; also 14 Id. 975, et seq.]

**2. Municipal Corporations (§ 803\*)—Streets—Defective Sidewalks—Street Crossing—Care Required of Pedestrian—"Sidewalks."**—While a street crossing may be considered in a sense as a part of the sidewalk, one passing over such crossing may more reasonably

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

expect obstructions, and should exercise a greater degree of care than when on the sidewalk, strictly so called.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1673, 1682; Dec. Dig. § 803.\* For other cases, see 12 Va.-W. Va. Enc. Dig. 916, et seq.; also 14 Id. 976, 977.]

For other definitions, see *Words and Phrases*, vol. 7, pp. 6505-6507; vol. 8, p. 7800.]

**3. Municipal Corporations (§ 768\*)—Defects and Obstructions in Streets—Crossings—Personal Injuries.**—A city, which built a street crossing, consisting of two parallel paths or flagstones, laid smooth and level, and separated by a small space filled with pieces of stone, was not liable to one for injuries through striking with her foot one of such pieces of stone, which projected about two inches above the level, and being thereby caused to fall.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1622-1625; Dec. Dig. § 768.\* For other cases, see, 12 Va.-W. Va. Enc. Dig. 907, et seq.; also 14 Id. 976.]

Error to Circuit Court of City of Richmond.

Action by Mary E. Schonberger, an infant, by next friend against the City of Richmond and others. From the judgment, defendant city brings error. Reversed, and remanded for new trial.

*H. R. Pollard, Bev. T. Crump, and Emmett Seaton*, for plaintiff in error.

*L. O. Wenderburg*, for defendant in error.

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.